IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 298 of 2005
With
CIVIL APPLICATION No. 1279 of 2005
In
FIRST APPEAL No. 298 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG
HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HARKISHAN LAXMIKANT PAREKH - Appellant(s)

Versus

KISHORBHAI CHHOTALAL PAREKH - Defendant(s)

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Appearance :
MR BJ TRIVEDI for Appellant(s) : 1,MR JT TRIVEDI for Appellant
MS JIGNASA B TRIVEDI for Appellant(s) : 1,
MR SANDEEP N BHATT for Defendant
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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 02/09/2005

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1. Admit. Mr. Sandeep N. Bhatt, learned counsel waives service of process of admission.

2. With the consent of the parties, the matter is finally heard.

3. Present appeal has been filed under Section 299 of the Indian Succession Act, 1925, being aggrieved by the judgment dated 31.12.2004, passed on Misc. Civil Application No.537 of 1999 by the learned Civil Judge (Senior Division), Rajkot. The facts in the nutshell for proper disposal of the matter are that the present respondent made an application for issuance of Letter of Administration on the ground that he having performed the last rituals of his father and being in possession of the title deeds, so also in view of the release deeds/ relinquishment deed executed by the other children of Chhotalal Parekh,and Kasturbai, widow of Chhotalal Parekh, was entitled to Letter of Administration. The application was opposed by some of the legal representatives/successors of the deceased Chhotalal

Parekh on the ground that no Letter of Administration could be issued. Present appellant, who happens to be the son of Laxmikant Chhotalal - son of Chhotalal Parekh also filed his independent objection and submitted that his father Laxmikant Chhotalal could not execute a relinquishment deed in favour of the present respondent/original claimant, because, the property in his hand qua the rights of the present appellant would be ancestral property and the appellant would have a share in the property.

4. It appears that despite proper opportunity given by the court and despite directions of this Court issued in Special Civil Application No. 11920 of 2003 none of the objector stepped into the witness box nor examined any witness in support of their claims/objections. The learned trial court ultimately closed right to lead evidence and proceeded to hear the matter. After taking into consideration the documents produced before it and the evidence led by the present respondent, it decided to grant Letter of Administration in favour of the respondent. The objector, Harikishan, son of Laxmikant Parekh is now before this Court, submitting inter alia that the court below was unjustified in relying upon the

relinquishment deed without deciding the question that whether his father Laxmikant who was in possession of the ancestral property could execute such release deed, violating the rights, which the present appellant had in the property.

5. When a Letter of Administration is issued by a competent court, then, person who is issued Letter of Administration does not become owner of the property, but he simply gets an authority to administer the property. In the present case, in the absence of any cogent material, challenging the right of the respondent to administer the property, the trial court was certainly justified in issuing Letter of Administration, specially in view of the fact that none of the objector were ready and willing to step into the witness box to lead evidence. We are unable to find any fault in the order passed by the court below. We, however, make clear that if the appellant claims any ownership rights or title in the property, then, he would certainly be entitled to seek a declaration from the competent court and may ask for a declaration of share and partition by metes and bounds. This right of the appellant certainly would not be affected by grant of the Letter of

Administration. On the merits, we refuse to interfere, but however, clarify the legal position as aforesaid. The appeal is dismissed. Consequently, Civil Application is rejected. Interim order granted earlier is vacated. On payment of necessary charges by any of the party, copy of this order be supplied to the concerned party within one week.

[R.S. GARG, J.]

[K.M. MEHTA, J.]

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